92-898

Supreme Court, U.S.
FILED
SEP 28 1992
OFFICE OF THE CLERK

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

ALIMADAD JATOI,
ALCINA F. JATOI
PETITIONERS

V.

AMEGA CONSTRUCTION COMPANY, ET AL.
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ALIMADAD JATOI
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QUESTIONS PRESENTED

I.

1. WHETHER THE DISTRICT COURT IMPERMISSIBLY COERCED, OR IMPERMISSIBLY CONTRIBUTED TO THE COERCION OF THE PETITIONER IN SETTLEMENT OF THE CASE.

2. WHETHER THE DISTRICT COURT ERRED IN DENYING PETITIONER'S RULE 59 MOTION FOR A NEW TRIAL OR TO ALTER OR AMEND THE JUDGMENT WHEN IT WAS IMMEDIATELY BROUGHT TO THE DISTRICT'S COURT'S ATTENTION THAT THE PETITIONER'S SETTLEMENT WAS NOT VOLUNTARY.

3. WHETHER DENIAL OF PETITIONERS RULE 60(B) MOTIONS WAS ERROR.

4. WHETHER PETITIONER ALCINA F. JATOI HAD HER TEXAS COMMUNITY PROPERTY RIGHTS VIOLATED SINCE SHE DID NOT APPROVE OF THE SETTLEMENT OR PARTICIPATE IN THE COURT SETTLEMENT HEARING.

5. WHETHER THE SANCTIONS VIOLATED PETITIONERS CONSTITUTIONAL RIGHTS AND WERE NECESSARY OR APPROPRIATE.

PARTIES

Alimadad Jatoi, Petitioner
Alcina F. Jatoi, Petitioner
Amega Construction, Inc., Respondent
Aetna Insurance Company, Respondent
Benedict Industries, Inc., Respondent
Pioneer Concrete of Texas, Inc.,
Respondent

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Alimadad Jatoi and Alcina F. Jatoi petitions for a hearing of this petition for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The judgment of the Court of Appeals was issued on August 23, 1991 affirming the judgment of the District Court. (Appendix A). The Court of Appeals denied Petitioner Alimadad Jatoi Rule 60 (b) appeal on June 30, 1992 (Appendix B) and on July 21, 1992 (Appendix C). The Court of Appeals dismissed Petitioner Alcina F. Jatoi Rule 60 (b) appeal on April 23, 1992 (Appendix D). The Order [the District Court issued no Judgment] of the District Court was issued on November 8, 1990. (Appendix E). The District Court denied Petitioner Alimadad Jatoi's Rule 60 (b) motion on August 8, 1991. (Appendix F). The District Court denied Petitioner Alcina F. Jatoi's Rule 60 (b) motion on December 18, 1991. (Appendix G).

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under its review authority and under Rule 60 (b). The dates of the judgments sought

to be reviewed are August 23, 1991, June 30, 1992, July 21, 1992 and April 23, 1992.

APPLICABLE FEDERAL QUESTIONS

1. WHETHER THE DISTRICT COURT IMPERMISSIBLY COERCED, OR IMPERMISSIBLY CONTRIBUTED TO THE COERCION OF THE PETITIONER ALIMADAD JATOI IN SETTLEMENT OF THE CASE.

2. WHETHER THE DISTRICT COURT ERRED IN DENYING PETITIONERS RULE 59 MOTION FOR A NEW TRIAL OR TO ALTER OR AMEND THE JUDGMENT WHEN IT WAS IMMEDIATELY BROUGHT TO THE DISTRICT COURT'S ATTENTION THAT THE PETITIONER'S SETTLEMENT WAS NOT VOLUNTARY.

3. WHETHER DENIAL OF PETITIONERS RULE 60(B) MOTIONS WAS ERROR.

4. WHETHER PETITIONER ALCINA F. JATOI HAD HER TEXAS COMMUNITY PROPERTY RIGHTS VIOLATED SINCE SHE DID NOT APPROVE OF THE SETTLEMENT OR PARTICIPATE IN THE COURT SETTLEMENT HEARING.

5. WHETHER THE SANCTIONS VIOLATED PETITIONERS CONSTITUTIONAL RIGHTS AND WERE NECESSARY OR APPROPRIATE.

STATEMENT

The government of the United States through the Declaration of Independence, the Constitution of the United States, and Amendments thereof has a covenant with its citizens, domestic or foreign born, that it will provide them with due process of law, and protect their rights under the constitution and common law, and see to it that liberty, pursuit of happiness and their property are not taken away from them, without due process of law.

This petition concerns a lawsuit which was filed by Amega Construction Company against the Petitioners and an entity called Jatoi Partnership on July 26, 1985, in the 236th District Court of Tarrant County, Texas. The case was removed to the federal system and went to trial on November 5, 1990.

The case was terminated by a settlement in the U. S. District Court in the Northern

District of Texas, at Fort Worth, Texas on November 7, 1990, at 8:30 p. m., after a very brief jury trial. The settlement gave Amega Construction Company in excess of $1.1 million (one point, one million dollars) over and beyond the total contracted price of $3.4 million (three point, four million dollars). Additionally, Aetna Insurance Company, which had provided a performance and labor and materialman bond to Petitioners and paid for by Petitioners received $100,000 in attorney fees. Petitioners paid for their court costs.

The Counterclaim of the Petitioners against Amega Construction Company and Aetna Insurance Company was never tried.

This petition questions the fairness of this settlement.

This petition also questions the legality of the way in which this settlement was arrived at and obtained.

REASONS FOR GRANTING THE WRIT

The Petitioners humbly seek the opinion of the Supreme Court if the trial held in the U. S. District Court in Fort Worth, Texas, meets the criteria for a fair and impartial trial under the constitutional requirements of due process as a whole.

The Petitioners also humbly seek the opinion of this court, as to the role of an attorney visa vis his client during a trial, and alternatives left to the client, if any, after the client's attorney has abandoned him and made a settlement on his behalf without proper authority and after misrepresentations to his client to preserve himself.

The Petitioners also humbly seek the opinion of this court to determine if the U.S. District Judge acted fairly and justly, not only in the trial as a whole, but in the part he played in the settlement process.

The petitioners humbly request this court to determine if the U. S. District

judge's warning of criminal prosecution, and his advice to the Petitioner Alimadad Jatoi concerning the 5th Amendment, was in fact intended not to preserve Petitioner's constitutional rights, but in fact was intended to coerce him with an unjust and unfair settlement, through and by Petitioners' attorney. Further, Petitioners humbly request the opinion of this court to determine if the atmosphere in this trial was conducive to a fair and impartial trial and not coercive.

The Petitioners also humbly request the opinion of this court to determine if they were not effectively deprived of representation of their attorney in this trial by the actions of the U. S. District Judge. And having been so, the Judge used the same attorney to coerce a settlement from only one of the Petitioners.

The Petitioners have been denied a hearing at the U. S. District Court level by the same trial Judge, and in this particular instance when a serious doubt has been raised, and is being raised, as to his role in an unfair settlement.

The Petitioners have been rejected twice in their appeals to the Fifth Circuit Court of Appeals. In their last opinion, the 5th Circuit has penalized the Petitioners, and, apparently are trying to intimidate Petitioners and their attorney. The reasons given, as Petitioners understand, are that the courts have no time to look at civil cases, and use of judicial resources in civil cases is restricted. Economics and taxpayers' money are cited as other reasons to restrict proper determination of facts in the civil justice system. It appears to the Petitioners, that to deprive citizens of their property without due process of law is no longer being considered as an important constitutional right as it is embodied in the U. S. Constitution. The 5th Amendment states "...nor be deprived of life, liberty or property without due process of law."

Petitioners point out that it appears as though the appellate court has basically relied on the brief submitted by Amega Construction Company. Amega's brief is **NOT ACCURATE**, and **MISQUOTES**

THE RECORD, both in its content and **SEQUENCE OF EVENTS.**

The Opinion of the 5th Circuit Court of Appeals takes certain paragraphs out of context, and out of sequence, and assumes the U. S. District Judge's role in this trial was not improper.

The Petitioners also humbly seek the opinion of this court to determine if the remarks of the appellate judges are warranted or unwarranted, and whether their penalties as imposed are proper under the circumstances.

THE FUNDS IN THE REGISTRY OF THE COURT -- HOW THEY GOT THERE AND THEIR OWNERSHIP

It is important to understand how the monies got into the court registry.

1. Amega's attorney arranged for the Performance Bond to be secured, but he did not provide the original to Petitioners, nor did he record it at the Tarrant County courthouse.

2. Amega Construction filed its lawsuit in July of 1985 against Petitioners.

3. Amega Construction Company filed questionable liens on their own behalf and upon behalf of their sub-contractors. And Amega claimed to have a first priority lien, even though they new or should have known that they did not.

District Judge Eldon B. Mahon, who first handled the case prior to his leaving the bench, in a footnote to his Order of April 15, 1988 [where he determined that all cases should be withdrawn from the Bankruptcy Court to the Federal District Court] that the only issue that was not withdrawn to the District Court was the dispute over the lien priority between Fort Worth Title Company and Amega Construction.

Judge Mahon stated:

"Based upon the limited record before the Court, it seems that Guaranty Federal Savings' lien is prior to Amega's lien. If this is true, the Court expects the parties to resolve this issue without further expense to

the clients and without further use of judicial resources.

The Court need not remind the competent and learned counsel in this case of the salutary effect of Rule 11 of the Federal Rules of Civil Procedure which requires counsel to have a good faith belief in the assertions prior to presenting such to the Court. Extensive discovery has taken place in these proceedings and the Court expects that all assertions are based upon sound factual support."

At the time of Judge Mahon's Order 53 depositions, including that of nine experts had been completed by the parties.

4. Amega's sub-contractor liens resulted in the Petitioners having to provide triple the monies required for the Permanent Loan to be closed.

5. Amega Construction claimed priority liens. The total amount of liens filed against the property by Amega Construction and its sub-contractors amounted to $1.4 million dollars, even though the total amount of money owed to

Amega Construction was in the amount of less than $300,000.00.

The total amount due to Amega Construction after all the subcontractors had been paid and all the credits given the Petitioners was the total sum of $277, 399.84. (*See* Appendix H for how this figure is determined.) For the purposes of this evaluation the Petitioners have used the last draw and contract documents.

The Disbursement Record of funds from the Registry of the Court are submitted as part of Appendix H.

In the final analysis, it can be seen that Amega Construction received $1.1 million dollars in addition to their contract price of $3.4 million dollars.

6. Since the Performance Bond was not available because of it not be recorded by Amega's attorney it was not possible to close the Permanent Loan with first priority lien being given to Guaranty Federal Savings and Loan.

7. As a result Petitioners were forced to sell a 25% interest in the property to Guaranty Federal Savings and Loan in

order to raise the funds necessary to close the Permanent Loan.

In July 1988, by agreed order, the District Court recognized that Amega Construction had withdrawn their priority lien.

Since Fort Worth Title Company, in the opinion of the Petitioners, had mismanaged the funds, Petitioners filed a claim against Fort Worth Title Company.

Fort Worth Title Company instead of returning the funds to the Petitioners, who were the rightful owners of the funds, placed the funds in the Registry of the Court. The funds in the Registry of the Court were not placed their for the benefit of Amega Construction .

The funds in the Registry of the Court were the community property of Alimadad Jatoi and Alcina F. Jatoi.

Judge McBryde dismissed Petitioners claim against Fort Worth Title Company without the consent of Alcina F. Jatoi, and with the coerced consent of Alimadad Jatoi.

PETITIONERS ABANDONMENT BY HIS COUNSEL

The record in the district court demonstrates that during the trial, Petitioner's counsel virtually abandoned his clients, leaving them without the effective assistance of counsel, especially when it came to the issue of settlement. The following summary of the transcript at trial highlights counsel's movement from representing Petitioners to representing himself.

1. Throughout the trial the District Judge routinely interjected himself into the proceedings to cut off anything that could remotely be described as repetitive or cumulative. (TR. Vol. II, pgs. 33-34) [Petitioner's attorney admonished (during cross of an adverse party) that he could not restate a critical question that appears designed to test the witness' understanding of a critical matter.]; (Tr. Vol II -95) (Court admonishes counsel regarding repetitiveness although the Court is not certain the matter has been covered); (TR.

Vol. II -133) (Court informs counsel that at their peril they must recall every single question previously asked, as well as its answer, or the examination of that witness ends); (TR. Vol II - 238-39) (The Court terminates reading of a deposition because the answer to a deposition question, about the first meeting of the witness with Alimadad Jatoi, includes mention of a trailer on Petitioners property which had been mentioned before). The Court also cut off testimony for alleged repetition even where it involved counsel's attempt to cross-examine an adverse witness to cut back the broad scope of his harmful testimony on an important issue. *See*, TR. Vol. III - 69 where Petitioner's attorney is cut off in the middle of cross examination as he appears to be preparing to impeach the witness. The effect of the Court's actions set out above on Petitioner's counsel was to intimidate him, and this intimidation was demonstrably evident at trial.

On the third day of testimony, the Court completely intimidated Petitioner's counsel by threatening him with contempt. As

Petitioner's attorney attempted to control a witness on cross-examination, he stated "Don't look at [opposing counsel]". The Court immediately stopped the proceedings, removed the jury and informed Petitioner's attorney that he was "going to withhold ruling at this time on whether [Petitioner's attorney] was in contempt of Court." (TR. Vol III - 104). The District Judge then informed Petitioner's attorney that he "...may not be so lucky the next time."

The net effect of this final dressing down by the District Court was to render Petitioner's attorney almost extraneous to Petitioner's case. This plainly comes through in the reading of the entire transcript. Indeed, by Vol. III, p. 168 of the transcript it is evident that Petitioner's attorney has moved from representing Petitioners to self preservation. Ten pages later, at pp. 179-80, it is clear that a serious conflict has developed between Petitioners and their attorney, and on pg. 180, the record shows Petitioner's counsel virtually abandoning Petitioner Alimadad Jatoi to a

former attorney, Mr. Trickey, who is present as a witness.

Since Petitioner Alimadad Jatoi is now painfully aware that his attorney either cannot or will not speak for him, he makes the following statement on the record at TR. Vol. III, pp. 180-81:

> Your Honor, as you know, I have been in this Court through the proceedings. I haven't missed a minute. Nowhere I have found the actual contract documents that Amega prepared and signed with me its terms have been discussed yet, [Sic]. Some of the items that were discussed that give certain advice within that contract document I have been told by my attorney are being excluded from the Court, [sic] and those were the basic terms on which I based my case on.
>
> If they have already been excluded and the contract has never been looked at and my witness and attorney at that time, Mr. Trickey,

> who helped me to frame and advise to sign that contract [sic] have not even been consulted, I told my attorney I don't think that I am being properly examined or brought before the jury.

Then Petitioner Jatoi, in an exchange with the Court at TR. Vol III - 185, clearly states that he cannot settle this case regardless and states why.

THE COURT: Now, let me suggest this to you, Dr. Jatoi: My understanding is that an offer that sounds to me like a very generous settlement offer has been made to you, and I am going to give you and your attorney ten minutes to evaluate whether or not you want to accept that settlement offer.

If the decision is that you don't want to accept it, then we will go on with the trial and I will allow your attorney to put in any legitimate evidence. I will, as I have before, rule on what I consider to be improper evidence and exclude it from the jury.

So if you want to explore that with your attorneys -- and there is nothing wrong with it.

The Court then goes on to state, after a response by Petitioner, "...and as you know, the parties have the right to withdraw a settlement offer at any time. And if you decline the settlement offer at this time, then you may not have another opportunity. And I understand it is a very generous offer that has been made to you." Petitioner Alimadad Jatoi clearly replies "...**I hope you will forgive me for saying this ... that there's no way that I can accept that offer because I am left with virtually nothing after that, anyhow.**" (That actual offer was $250,000.00 and the Court later expresses surprise (TR. Vol III-330) that Petitioner is accepting $150,000.00).

At TR. Vol. III - 285, the record illustrates how intimidated by the Judge Petitioner's attorney has now become. At

this point in the proceeding Petitioner Alimadad Jatoi is forced to proceed by narrative rather than response to questions in order to try and lay the foundation to establish that the Denson drawings which had been excluded under the parole evidence rule were, in fact part of the contract and identified as such in the contract.

The actual settlement offer which had been transmitted to Petitioner Alimadad Jatoi prior to the time it was brought up before the District Court was an offer to give him $250,000.00 of the funds in the registry of the Court. This settlement offer would pay $1,000.000.00 to Amega Construction. Petitioner rejected this offer for two reason: First, it would take nearly all the funds in the registry of the Court, if even that would be enough, to add the square feet necessary to bring the building up to the specifications required by the contract and give it the value necessary to make ti cash flow as a business proposition, whether as a medical facility or otherwise. Two

hundred and fifty thousand dollars ($250,000.00) would have left Petitioners Jatoi with nothing, especially, after paying attorneys' fees. Second, under the contract as signed with all of the signed change orders, and accounting for the money already paid to Amega under the contract, then were Amega to prevail on all of their claims of monies due it under the contract, the total due Amega would have been under $300,000.00. *See,* Affidavit of Alimadad Jatoi, § 6 sworn to on May 16, 1990, and attached as Exhibit to the Rule 60 (b) motion. The settlement made no sense to Petitioner Alimadad Jatoi as he explained that to the District Court.

On that same third day of trail Petitioner's attorney, Mr. Curtis, informed him through other counsel at his firm that "...the Judge was adamant to see the case settled." *See*, Affidavit of Alimadad Jatoi, § 7. During the interchange between the Court and Petitioner Alimadad Jatoi, Mr. Curtis insisted that Mr. Trickey sit in the place where Mr. Curtis normally would

have sat and that Mr. Trickey represent Petitioner Alimadad Jatoi because Mr. Curtis was refusing to do so. *See*, Affidavit of Alimadad Jatoi, § 7.

It was at this point in the trial, after Petitioner Alimadad Jatoi resumed the witness stand, the the District Court apparently decided that Petitioner Alimadad Jatoi may have made a "...false representation to a federal financial institution..." because he had listed, in an early 1986 financial statement, a valuation on his building provided to him by Guaranty Federal Saving and Loan in a 1985 appraisal. At this point the Court excused the jury and directed counsel to explain to Petitioner Jatoi his 5th Amendment rights.

During this recess, ordered by the Court, Mr. Curtis told Petitioner Jatoi that the Judge was ready to hang him and the jury was about to take him to the cleaners. Petitioner Jatoi responded to Mr. Curtis, "Don't I have a right to appeal." Mr.

Curtis responded that Petitioner had no money to pay for an appeal, that he would be required to post a bond and that he, Mr. Curtis, was not going to work for Petitioners any more. *See*, Affidavit of Alimadad Jatoi, §8 - 9. Shortly thereafter Petitioner Alimadad Jatoi returned to the witness stand where the Court admonished Petitioner of his 5th Amendment rights and repeatedly emphasized the potential criminal liability and his right to remain silent. (TR. Vol. III, 323-4).

Shortly thereafter the Judge sent the parties out again to discuss settlement. At that point Petitioner Jatoi's counsel, Mr. Spencer, informed him that if he didn't settle the "federal judge" had the power to refer him to the District Attorney, a Mr. Marvin Collins, who in turn initiated a criminal investigation and the FBI would get involved. *See,* Affidavit of Alimadad Jatoi, § 22. Mr. Spencer told Petitioner Jatoi that "...you will in all likelihood, with no money end up in jail. As a matter of fact, Jim and I are still concerned that even

if you do this and settle the case, this Judge may still refer you to the D. A. for investigation and criminal prosecution." *See*, Affidavit of Alimadad Jatoi § 11. Petitioner Alimadad Jatoi then requested that Mr. Spencer contact Petitioner Alcina F. Jatoi because he needed her advise. Mr. Spencer refused to even to try and call Petitioner Alcina F. Jatoi and later told Petitioner Alimadad Jatoi that he could not find her at home or in her office. Only at this point did Petitioner Alimadad Jatoi, under threat of criminal prosecution and abandonment by his counsel, agree to the settlement. *See*, Affidavit of Alimadad Jatoi, §§ 12-13.

That settlement was $100,000.00 less than the settlement he had explicitly rejected shortly before the larger settlement left him with nothing. On that same day Petitioners sought other counsel. The following day Petitioners informed the Court and the other parties that the settlement was not voluntary and Petitioners requested that the Court delay disbursement

of the funds. (Appendix N). Petitioners have never negotiated the $150,000.00 check delivered to his former attorney, Mr. Curtis.

DR. ALCINA F. JATOI

Petitioner Alcina F. Jatoi is a woman and her rights have been violated.

Dr. Alcina F. Jatoi, M. D., Diplomate American Board of Pathologists and member of the American College of Pathologists, seeks relief from this Court as to her rights, which were violated during the trial of a lawsuit filed against her by Amega Construction Company as a co-defendant, and ended in a settlement.

Petitioner Alcina F. Jatoi does state that her constitutional rights were violated. She was deprived of her property and she had a 50% ownership in this property. She states that she is not a surrogate of her husband, Petitioner Alimadad Jatoi. She is the sole owner of the Anatomical Pathology Laboratory of Texas and has an independent practice.

Mr. James Curtis stated in court before the trial began on November 5, 1990, that he was the attorney for Alcina F. Jatoi. However, he had no authority to settle on her behalf. Her name was not even mentioned at the time of settlement, nor was she present in the courtroom, even though a specific request was made by Petitioner, Dr. Alimadad Jatoi.

As a matter of fact, Petitioner Alcina F. Jatoi had mortgaged her laboratory and paid for the property though purchased in 1981, when the medical facility was going to be built. This is documented in the transcript by the testimony of Petitioner Alimadad Jatoi. At Volume II, page 251, line 20, in which Mr. Wetzel, in cross examination of Petitioner Alimadad Jatoi, asks:

Q. And those loans concerned both your land loans--that is to say, the land that is in issue, correct?

A. Yes.

Q. --And it also concerned some loans on medical equipment that your wife had borrowed on?

A. Yes.

Q. And the sum total of those loans exceeded half a million dollars, didn't it?

A. Yes.

In her Rule 60 (b) motion Petitioner Alcina F. Jatoi raised the ownership of the land and her interest in the land. 50% of the funds that were distributed in this case were her property under the community property laws of the State of Texas and her property should be returned to her. Petitioner Alcina F. Jatoi receives separate and independent pay from her laboratory, and income tax as well as social security for herself is paid from her laboratory. This petition on her behalf is being filed in accordance with Amendment I and Amendment V of the Constitution of the United States. Petitioner Alcina F. Jatoi humbly requests an opinion that disposing of 50% of her property in the registry of the Court, without her consent, was legal or illegal under the Constitution of the United States.

AETNA INSURANCE COMPANY
THE BOND

In the settlement agreement, Respondent, Aetna Insurance Company received attorney fees in the amount of $100,000.00.

It was one of the conditions of the contract agreement that a performance and labor and materialmans bond be provided. This bond was paid for by Petitioner Alcina F. Jatoi, not Petitioner Alimadad Jatoi.

The performance bond classifies the building as a medical and professional office building and, among other things specifies that no liens and lawsuits will be filed against it. The medical and professional building was never completed, liens were filed and a lawsuit was filed by Respondent Amega Construction Company and some of their subcontractors.

By letter dated April 13, 1984, signed by Respondent Amega Construction Company Business Manager Dwain Howard, Amega acknowledged that the bond was arranged for and by Amega

Construction Company's attorney, Mr. Don Wetzel. The original bond was never provided to Petitioners and was provided to Andy Brundage of A.E.C.C. (Appendix I)_ Consequently, Petitioners were compelled to sell 25% of their assets to the Guaranty Federal Savings and Loan, and raise further monies to enable U. S. Life Title Company to issue a First Priority Lien to Guaranty Federal Savings and Loan.

The priority lien claim by Amega Construction Company and their subcontractors were invalid and in contravention of the contract that existed between Amega Construction Company and Petitioners. In order to circumvent the contract Amega Construction Company filed this lawsuit against the Petitioners in the 236th District Court of Tarrant County, Texas which was moved to the federal system as this case.

After considerable difficulty the Petitioners were provided with a copy of the performance bond, but not until after the loan closed on September 25, 1985.

After repeated requests by letter and telephone calls, Petitioners were finally able to get Respondent Aetna Insurance Company to carry out the inspection and preliminary evaluation of the building. After that task was completed by Aetna Insurance Company, Petitioner Alimadad Jatoi received a request from Aetna Insurance Company that "...no future progress payments or retainage be released to Amega **without our** [Aetna Insurance Company] **prior written approval.**" (Appendix J).

Approximately ten days before trial, Aetna Insurance Company's attorney offered through Petitioners attorneys $60,000.00 cash along with an indemnity agreement that if Petitioners succeeded in their counter claim against Amega Construction Company, Aetna Insurance Company would be responsible for up to $15,000,000.00 in damages and attorney fees. Any testimony of this agreement was restricted by a motion in liminie. (R. Vol.I, pg.31, ln.19-25.)

Petitioners were advised by attorney Mr. Curtis not to accept the settlement because Aetna Insurance Company would be held responsible independently for violating the terms of their bond, and that Petitions were going to win sums in excess of the $60,000.00 offered. Further, according to Mr. Curtis the Supreme Court of Texas had established that an insurance company, that is, a bonding insurance company, must evaluate and determine on their own the liability and has the responsibility to compel the opposing party to perform as per their bond.

On August 10, 1986, Petitioners demanded that Aetna Insurance Company complete the building under the bond. Their refusal to do led to the Petitioners claim being filed against Aetna.

An additional important fact is that the firm of Winstead, Sechrest & Minick, P. C. had represented Petitioners through their attorney, Mr. Stanley Barth, in the financial and loan arrangements that Petitioners had attempted in order to obtain a loan to construct the medical center. Such attempt

was not successful. However, a reading of the transcript determines that the same law firm, now representing Respondent Aetna Insurance Company used the information gathered by the law firm from Petitioner and Mercantile Bank against Petitioner during the trial of Petitioners' case against Amega Construciton Company and Aetna Insurance Company.

Petitioners reason that taking into account the facts stated above, as documented, that it is not reasonable to believe that Petitioners would have willingly, and of their own free will, agreed to settle with Respondent Aetna Insurance Company by agreeing to pay them $100,000.00 in attorney fees of Petitioner's money.

THE JUDGE

John H. McBryde was appointed as Federal District Judge in Fort Worth, Texas, in August 1990. Prior to this, he was an astute attorney. The Petitioner's

case was perhaps one of the first cases to be tried by him.

During the trial, Mr. McMakin and Mr. McClane, for reasons unknown to Petitioner Alimadad Jatoi came to the court on Wednesday, November 7, 1990, sometime after the lunch break. It was Petitioner's deduction that they were invited to come to the courthouse by Petitioner's attorney, Mr. James Curtis. Petitioner saw Mr. McMakin and Mr. McClane sitting on a bench in the corridor opposite the chambers of Judge McBryde. The reason for their visit was unknown to the Petitioner, and when the Petitioner approached them, they told the petitioner that they were there to assist Mr. Curtis in his discussions with Judge McBryde.

Therefore, the remarks that follow are the Petitioners' opinions deducted post-trial over a period of approximately two years.

The Petitioners believe that the Judge had concluded that if the case was to proceed to a jury verdict, Petitioners might lose the case and appeal. The perusal of the transcript as a whole indicates that under

the circumstances this was a possibility. However, to avoid the retrial, before or after an appeal, Mr. Curtis must have decided, under pressure from the judge, to bring an end to the trial to please the judge and save himself penalties or sanctions.

Another alternative left, under the circumstances, was to ask for a new trial. As a matter or fact, Judge McBryde's warning of criminal prosecution to Petitioner would have invoked from an attorney working on his behalf and for his interests, a request for a mistrial or a new trial. Another alternative open to Mr. Curtis was to withdraw from the case during the morning of Wednesday, November 7, 1990. This would have led to possibly harsh treatment of Mr. Curtis by Judge McBryde. Under the circumstances, Petitioners would not be surprised if a deal was worked out so that the case could be terminated in such a fashion that Mr. Curtis would incur no penalties. Also, the Judge would not have to be reversed in an appellate process. As a result, Petitioner Alimadad Jatoi was therefore not only

coerced and misrepresented to, but manipulated in such a way as to make it look like the settlement had been made in open court with Petitioner's consent.

Attached as Appendix K is an article which appeared in the Wall Street Journal, dated July 23, 1992, which indicates that Judge McBryde does not only encourage settlements, but is prone to coerce them, with or without the consent of all parties involved.

The District Judge's conduct of the trial can be compared with *McKnight v. General Motors Corp.*, 908 F. 2d 104, 115 (7th Cir. 1990) where the Seventh Circuit disapproved of the imposition of arbitrary limitations, and with *Kothe v. Smith*, 771 F. 2d 667, 669 (2nd Cir. 1985) where the Court stated the law with respect to the role of judges in the settlement process. The *Kothe* court stated:

Although the law favors the voluntarily settlement of civil suits it does not sanction efforts by the trial judges to effect

settlements through coercion. In the *Wolf* case, cited with approval in *Del Rio, supra*, the Court said 'We view with disfavor all pressure tactics whether directly or obliquely, to coerce settlement by litigants and their counsel. Failure to concur in what the Justice presiding may consider as adequate settlement, should nor result in an imposition upon a litigant or his counsel, who reject it, of any retributive sanctions not specifically authorized by law.' In short, pressure tactics to coerce settlement simply are not permissible. 'The judge must not compel agreement by arbitrary use of his power and the attorney must not meekly submit to a judge's suggestion, though it be strongly urged.' (citations omitted). *See also, In re Ashcroft*, 888 F. 2d 546 (8th Cir. 1989) [Court expressed concern over attempts by a district court to coerce a settlement.]

The factors an appellate court should evaluate in analyzing voluntariness in a trial settlement are established in *MacLeod v. D. C. Transit System, Inc.*, 283 F. 2d 194 (D.

C. Cir. 1960). Application of those factors to Petitioners circumstances clearly establishes that the District Court should have set the settlement aside and that the appellate court should have reversed the District Court. *Cf. Brees v. Hampton*, 877 F. 2d 111 (D. C. Cir. 1989).

With this background, Petitioners proceed with the factual information regarding this case.

FURTHER REASONS FOR GRANTING THE WRIT

The events leading to the settlement agreement are important. Petitioner Alimadad Jatoi was the only defendant present in the courtroom. Judge McBryde, in the late afternoon of the third day of trial issued him a warning of the possibility of criminal prosecution, and thereby asked him to consider the 5th Amendment before the jury if the Petitioner wished to proceed with his testimony. This warning was with regard to a "FINANCIAL STATEMENT" or "STATEMENTS" which Petitioner

Alimadad Jatoi had submitted to a federally insured savings and loan, namely, Guaranty Federal Savings and Loan.

This warning of criminal prosecution was followed by events which led to the termination of trial and the settlement.

The 5th Circuit dismissed this warning by ruling that judges have to be alert to defendants' constitutional rights. Petitioner, Alimadad Jatoi, contends that this warning by the District Judge was in fact used by the judge to compel the Petitioner's agreement to settle the case. Additionally, it was used to enable the attorney to frighten him into a settlement. This sequence of events involved misrepresentations and manipulations in the courtroom. Factually, it violated Petitioner Alimadad Jatoi's constitutional rights.

It is important to note the timing of this warning. Moreover, the warning was irrelevant and unrelated to Petitioner's contract with Amega Construction. The accusations and implications concerning financial statements had no basis in fact.

The chronology of events was as follows:

1. On Tuesday, November 6, 1992, while Petitioner Alimadad Jatoi was being cross-examined by Amega Construction Company's attorney, the same subject of financial statements submitted to Guaranty Federal Savings and Loan was brought up for the first time. Mr. Curtis, Petitioner's attorney repeatedly objected. Judge McBryde repeatedly overruled the objections. Judge McBryde then questioned the Petitioner if the financial statements in question were given to Amega Construction. Petitioner answered in the negative. Amega Construction Company's attorney also agreed that the financial statements were not given to Amega Construction Company. Judge McBryde changed his mind and ruled that these financial statements had no relevance to Amega Construction Company's fraud claim and he therefore disallowed them as evidence.

2. On Wednesday afternoon, Petitioner's attorney was in and out of the courtroom. He had summoned his partners to the court house. He had meetings with Judge McBryde. Mr. Curtis began to pressure Petitioner into settlement and quoted many figures. That afternoon, Mr. Curtis told Petitioner, "The Judge wants to talk to you." While in the courtroom, Mr. Curtis told Judge McBryde that Petitioner wanted to talk to him. Mr. Curtis told Judge McBryde that Mr. Richard Trickey had Petitioner Alimadad Jatoi's faith. Mr. Curtis substituted Mr. Richard Trickey in him own place. Petitioner addressed Judge McBryde. Under the circumstances Petitioner tried to make himself as clear as possible to Judge McBryde. This was sudden and unexpected to Petitioner. Petitioner had never addressed a federal judge in open court before. Petitioner told Judge McBryde that the facts in the case were not coming out and that he would not settle the case. Judge McBryde said that a generous offer had been made and that

Petitioner might end up with nothing if the offer was not accepted.

3. Petitioner's attorney Mr. James Curtis tells the judge (Vol. III of Record) that he had conflicting signals from the Petitioner. He also informed Judge McBryde that Petitioner would be testifying against his wishes and informed the judge that he wanted the Petitioner to proceed in a narrative form of testimony. A conference at the bench occurs wherein the judge tells the attorneys outside the hearing of the Petitioner, and the jury, that Petitioner must be cross-examined. Petitioner objected to the discharge of the witnesses. Mr. Curtis again did not tell the truth in the court because witnesses were not discharged with Petitioner's consent or request.

Judge McBryde warns Petitioner about cross-examination, but Petitioner insisted that he would testify. As a matter of fact, Petitioner had already been cross-examined on Tuesday and no such concern was expressed at that time. After Judge McBryde's warning that petitioner would

be subject to cross-examination; Petitioner infers as a predetermined arrangement, either between the Plaintiff's attorneys and Mr. Curtis, with or without the knowledge of the judge, that the financial statement subject is going to be reintroduced and a warning given to the Petitioner.

4. On Wednesday afternoon, Mr. Wetzel, Amega Construction Company's attorney cross-examines Petitioner. He questions on the subject of the financial statements given to Guaranty Federal Savings and Loan. Mr. Wetzel refers to the appraised value of the property. Judge McBryde retires the jury and expresses surprise as to what the Petitioner is testifying to. Mr. Curtis tells Judge McBryde that this is the first time he had heard of it. He also says that Petitioner was part of the problem. There followed a discussion between Petitioner and Mr. Curtis [off the record]. When Petitioner returns to the witness stand, Judge McBryde emphasized the possibility of criminal wrong doing and criminal prosecution. However, Petitioner continued to insist that

he had done nothing wrong and continued to testify. The background of this threat or possible criminal prosecution is important. Only 60 days or so before the trial of this case, the Chairman and Co-Chairman of the Board of Directors of Guaranty Federal Saving and Loan were convicted of fraud against their own company and they were sentenced to a prison terms in excess of twenty years.

5. Judge McBryde retired the jury. He asked Petitioner to step down and go to the counsel table. He began his address and it appears in the transcript as if he is talking to Petitioner. There is no indication in the transcript where Petitioner was and if he is able to hear or respond to the judge.

(i) On Tuesday, Petitioner's attorney was fully aware of the subject of Petitioner's financial statements and that Petitioner had done nothing wrong. Mr. Curtis objected on the same subject and his objections were overruled, over and over again on the same subject. Later Judge McBryde ruled that the financial statements

had nothing to do with Amega Construction Company's case against Petitioner, whether Amega claimed fraud or otherwise.

(ii) In other words Judge McBryde was fully aware of the statements which were presented the previous day.

(iii) The fact that the judge and Petitioner's attorney expressed surprise, as if they know nothing about this subject and were concerned about Petitioners constitutional rights, is not only absurd, but borders on being ridiculous. The second point is that Judge McBryde brought up the subject of settlement immediately after his warning. It is also odd that this warning was given after Mr. Curtis had informed Judge McBryde that all the witnesses had been discharged and the defense case was not going to proceed. Actually, Judge McBryde said. "I understand the defense has rested."

Another important point is that Petitioner had returned to the witness stand to receive this warning of criminal prosecution. Judge McBryde spent some

time explaining insistently and inquiring whether Petitioner understood what the judge was saying.

However, to encourage Petitioner to settle, Judge McBryde asked Petitioner to leave the witness stand and go to the counsel table. He particularly proceeded to talk with the attorneys, paralegals, and other, but Petitioner could not hear the discussion or judge's recommendations. The question is, did he verify the Petitioner was able to hear what he was saying? Or, in fact, the Petitioner was unaware of and unable to hear what he was saying? This action is followed by a discussion off the record. Apparently, this discussion is between the Petitioner and his attorney. This exchange in the transcript does not make clear who the Petitioner was speaking with or what Mr. Curtis had advised about settling the case. The question is, was Petitioner talking with his attorney?

The only thing clear in this discussion is that Petitioner gave his attorney authority to settle on the terms that he recommended to both Petitioners "last night," Tuesday,

November 6, 1990. This authority was to accept Amega's offer to settle for all escrow funds and attorney's fees, a total of $2.2 million in favor of Petitioners.

The final agreement that was read into the record was made by Petitioner's attorney and read into the record by the Plaintiff's attorney. The judge was not seated on the bench at this time and the court was not in session. A small group had formed around the court reporter and the Petitioner stood 10-15 feet away from this group on the right side in the company of a paralegal and one of the associates of Mr. Curtis. Mr. Curtis motioned his associate and he asked Petitioner to say, "yes," and Petitioner said, "Yes, sir." The final terms of the agreement Petitioner learned later, not at the time they were dictated in open court.

FURTHER ARGUMENT

In arriving at their decision the Appellate court has made some incorrect assumptions. The Appellate court also has

paid no attention to the sequence of events and/or whether this warning was relevant to Amega's case against the Petitioners. Petitioner attaches two letters (Appendix L, Append. M) which were written by Charlie Brown, an appraiser, to Guarnaty Federal Saving and Loan in which he appraised the value of the building at $11, 920,000. This figure was arrived at by him with information in past gathered from Amega Construction Company. The Petitioner took no part in the appraisal what so ever. The appraiser was selected and employed by Guaranty Federal Saving and Loan as is normal. Petitioners paid for his services.

The Appellate court incorrectly assumed that Petitioner had heard and responded to the judge while he was advising a settlement on the case. The Appellate court also incorrectly assumed that the Petitioner was part of the group where the settlement was being read and that Petitioner was fully informed. Petitioner was in fact away from the group and was responding only to his attorney while Petitioner was seated 10-15

feet away with a paralegal and associate of his attorney.

ARGUMENT AS RELATES TO SANCTIONS

It is anticipated that Respondents will argue that this writ if frivolous since the appellate court found the Rule 60 (b) motion appeal to be frivilous. However, logic does not prevail in that argument. This Court must make a determination of its own on the issue of the validity of this writ. It is the opinion of Petitioners, layman that they be, that for the reasons stated this writ is not firvolous, nor is it vexatious or dilatory. There is nothing in the record to demonstrate that this writ is vexatious or dilatory and the appellate court made such a conclusion without citing facts to support its opinion.

In the first opinion the appellate court denied hearing Petitioners point raised for the first time on appeal that his former counsel was also responsible for the

coercion of the settlement. *See*, Appendix A, footnote 3, *infra*.

In fact, in the second opinion the appellate court ignores this issue that was properly raised in the Rule 60 (b) motion both before the district court and the appellate court. The only issue the second opinion really concerns itself with is the sanctions it imposes on Petitioners and their attorney.

The appellate court specifically cautioned Petitioners that if they pursued this case in any court within the jurisdicition of the 5th Circuit Court jurisdiction the such action "...will expose him and any participating counsel to the full panoply of sanctions available to this court, **including but not limited to fines, detention, suspension and disbarment.**"

Petitioners argue that this "caution" has such a "chilling effect" as to violate their constitutional rights to utilize the federal court system to redress their grievances. In effect, the appellate court is imposing

unconstitutional prior restraint that is impermissible under the U. S. Constitution.

The last appeal to the 5th Circuit was in the form of appealing a Rule 60 (b) motion. While rejecting this appeal Judges Jones, Duke and Weiner have made some remarks against me. I was brought up by a man who belonged to the judiciary in British India. He was kind, compassionate, just, and a fair man. I have always held the judiciary in high esteem and respect. Therefore their remarks are not only unfair but very painful to me. These remarks are intemperate and unbecoming of the judiciary as a whole and of appeal judges in particular. I have copied the following paragraph from a surgical book.

From too much zeal for what is new
And contempt for what is old
From putting knowledge before wisdom
Science before art, cleverness before common sense.
From treating patients as cases
And from making cure of disease

More grievous than it's endurance
Good Lord deliver us.

Someway this can be paraphrased and applied to our justice system.

Maybe I should add: The truth is the center of the judicial universe, around which all our works revolve and toward which all efforts trend.

CONCLUSION

Petitioners move the Court to grant this *Writ of Certiorari* and to reverse and remand the judgment of the Court of Appeals and to set aside the settlement in this case and to order a trial on the merits.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 91 - 1086
Summary Calendar

IN THE MATTER OF: DR. ALIMADAD JATOI, ET AL.,
Debtors.
AMEGA CONSTRUCTION, INC., ET AL.,
Appellees,

VERSUS
ALIMADAD JATOI,
Appellant.

Appeal from the United States District Court for the Northern District of Texas
(CA 4-88-041-A)

(August 23, 1991)

Before GARWOOD, WEINER and BARKSDALE, Circuit Judges.

PER CURIUM: [1]

Alimadad Jatoi appeals from the denial of his motion for a new trial, contending that, as a consequence of certain actions by the trial judge, he was coerced into accepting an involuntary settlement. We AFFIRM.

I.

In August 1985, Amega Construction, Inc., filed suit in state court for breach of a contract to construct an office building in Bedford, Texas, claiming that Jatoi, the project owner, had failed to pay sums due under the contract. Jatoi counterclaimed, alleging that Amega had failed to perform work required under the contract. Jatoi also filed a third party complaint against Aetna Insurance Company, Amega's surety,

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1 Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

maintaining that Aetna was obligated under its performance bond to complete construction of the project. Various unpaid subcontractors to Amega were also involved in the suit, seeking foreclosure of mechanics liens filed against the project.

In August 1987, Jatoi filed a voluntary petition for Chapter 11 bankruptcy. Jatoi removed the state court proceedings to federal district court, which were referred to bankruptcy court pursuant to 28 U.S.C. §157(B) (2) (b). The reference was later withdrawn; and, in November 1990, the action proceeded to trial in the district court.

After three days of trial, the parties announced a settlement which provided for disposition of the proceeds of Jatoi's construction loan, which had been deposited into the court registry. Jatoi acknowledged his agreement to the settlement in open court. On November 8, 1990, the court confirmed the terms of the settlement in a final order which dismissed with prejudice all claims in the litigation.

Jatoi timely filed a motion for a new trial, asserting that, as a consequence of actions by the district judge, he had been intimidated and coerced into agreeing to the settlement. The district court ruled that there was no factual basis for the relief sought by Jatoi, noting that the "settlement was made after extensive negotiations between the parties and their respective attorneys, it was announced in open court, and Jatoi expressed in open court his desire to make the settlement and his understanding of the terms and conditions of the settlement." Jatoi appealed.

II.

Jatoi contends that a new trial is warranted because he was "coerced" into an involuntary settlement. Alternatively, Jatoi contends that, should the record be insufficient to demonstrate involuntariness, this court should grant the district court leave to grant Jatoi relief from its final order under Fed. R. Civ. P. 60(b); and, further, that this appeal should be stayed until the district court rules on the Rule

60(b) motion.[2] Neither contention has merit.

A.

"Appellate review of a district court's action on a motion for new trial is limited to whether the district court abused its broad discretion." *Koonce v. Quaker Safety Prods. & Mfg. Co.*, 798 F. 2d 700, 718 (5th Cir. 1986) (citing *Springborn v. American Commercial Barge Lines, Inc.*, 767 F. 2d 89, 97 (5th Cir. 1985); *Robin v. Wilson Bros. Drilling*, 719 F. 2d 96, 98 (5th Cir. 1983)). "We apply an especially deferential standard in cases [where, as here,] motions for new trial have been denied." *Koonce*, 798 F. 2d at 718 (citing *Dixon v. International Harvester Co.*, 754 F. 2d 573, 586 (5th Cir. 19850).

Jatoi contends that his settlement was involuntary because (1) the district court used pressure tactics to coerce him into settlement, and (2) he was intimidated as a

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[2] In a letter to the court clerk dated May 30, 1991, Jatoi's counsel represented that, on May 22, 1991, a Rule 60(b) motion had been filed in the district court. That motion has not been made part of the record on appeal.

result of the district court 'overly warning' him that he could invoke his right against self-incrimination under the Fifth Amendment to the United States Constitution. [3]

"Settlement agreements 'are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits.'" *Miller v. Republic Nat'l Life Ins. Co.*, 559 F. 2d 426, 428 (5th Cir. 1977) (citations omitted). "Where the parties, acting in good faith, settle a controversy, the courts will enforce the compromise without regard to what the result might have been had the parties

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[3] In his reply brief, Jatoi contends, for the first time on appeal, that the district court was not solely responsible for the involuntariness of the settlement; that his trial counsel was also at fault "when he coerced a settlement out of Jatoi rather than standing up to the [court] and making a record for appeal." This court has repeatedly held that it is improper to raise an issue for the first time in a reply brief, because the appellee is afforded no opportunity to respond. E.g., *Blumberg v. HCA Management Co.*, 848 F . 2d 642, 646 (5th Cir. 1988), *cert. denied*, 488 U. S. 1007 (1989); *Nissho-Twai Co. v. Occidental Crude Sales, Inc.*, 729 F. 2d 1530, 1539 n. 14 (5th Cir. 1984); *Knighten v. Commissioner of Internal Revenue*, 702 F. 2d 59, 60 n.1 (5th Cir.), *cert. denied*, 464 U. S. 897 (1983). Accordingly, we do not address this issue.

chosen to litigate." *Terrain Enters., Inc. v. Western Cas. & Sur. Co.*, 774 F. 2d 1320, 1321 (5th Cir. 1985), *cert. denied*, 475 U. S. 1121 (1986) (citing *Hennessy v. Bacon*, 137 U. S. 78 (1890)).

1.

Jatoi cites *Kothe v. Smith*, 771 F. 2d 667, 669 (2d Cir. 1985) for the proposition that "pressure tactics [on the part of the trial judge] to coerce settlement simply are not permissible." However, the record clearly reflects that Jatoi was not pressured into settlement by the district court. During trial, the following exchange took place:

THE COURT: Dr. Jatoi, you can step down.....While we're here with just the attorneys and legal assistants and court staff; in other words, while the Jury is out, I might mention to you that I think from what I have heard of this case there is the potential that you will be making a mistake in not accepting the settlement offer that has been extended to you. I think your attorneys have done an excellent job in causing as generous an offer as has been made to you to be made to you. I don't

normally become involved in encouraging people to make settlements, and I hesitate to do so in this case, but I see the way this case is going. And we're far enough along now that you can pretty well predict that there is a serious risk you won't get anything. And bearing that in mind, I'm going to encourage you to discuss with your attorneys again the possibility of accomplishing a settlement.... ...I would encourage the attorneys to visit and try to find out what can be done; and then you, Dr. Jatoi, to give serious consideration to whatever it is that is available now by way of settlement.

* * * *

(Discussion off the record.)

DR. JATOI: Well, yes, sir, that is fine.

[JATOI'S ATTORNEY]: Well, speak up. If you want it, say so; the last chance, Mr. Jatoi.

DR. JATOI: We'll accept that.

THE COURT: Do what?

DR. JATOI: Your Honor, we'll accept that.

THE COURT: I can't tell --

[JATOI'S ATTORNEY]: I hear him say he would like to accept the settlement offer, Your Honor, as much as you would like to not get involved, is what I heard him say.

THE COURT: Then you all sit down some place around here and talk.

[JATOI'S ATTORNEY]: I hope so. Would you like to talk?

DR. JATOI: You go ahead and talk.

[JATOI'S ATTORNEY]: Do I have your authority to talk, Dr. Jatoi?

DR. JATOI: I gave you that last night.

[JATOI'S ATTORNEY]: Okay. May I have it again today?

DR. JATOI: Sure.

THE COURT: Okay. Well, you all try to work this thing out.

Jatoi informed the district court that he wanted to accept a settlement offer; most certainly, he gave the court no indication that he felt coerced. Further, Jatoi affirmed on the record that his attorney had authority to discuss settlement. The court did not dictate the terms of settlement to Jatoi; further, it did not participate in any settlement negotiations.

At most, the district court simply encouraged settlement negotiations between the parties and their attorneys to take place. It is not improper for a district court to suggest that parties discuss the possibility of settlement. *See* Fed. R. Civ. P. 16 (a) (5) and (c) (7) (district court may direct parties and attorneys to appear at conference for purpose of facilitating settlement). *See also Ullman v. Olwine, Connelly, Chase,*

O'Donnell & Weyher, 123 F. R. D. 253 (S.D. Ohio 1987), *aff'd*, 857 F. 2d 1475 (6th Cir. 1988)j, *cert. denied*, 489 U. S. 1080 (1989) (mere suggestion of settlement discussions is not coercion). The district court's comments concerning settlement were well within its discretion.

2.

Jatoi also contends that the district court, in instructing him on his Fifth Amendment rights regarding an alleged false representation on a financial statement, so intimidated him that he was unable to understand the settlement and was coerced into accepting it. The exchange in question took place just before the foregoing colloquy concerning settlement and was as follows:

THE COURT: Pardon me. I think we better ask the Jury to retire to the Jury room a minute.

(Jury excused.)

THE COURT: Mr. Curtis, I didn't realize -- it just now dawned on me the potential significance of what this witness is saying. As I understand it, there is the potential that he has made false representations to a federal financial institution. .... Maybe you want to, before we get the Jury back, explain to him his Fifth Amendment rights.

* * * *

(Recess was taken.)

* * * *

BY THE COURT:

Q. Dr. Jatoi, I am not going to ask you what you have discussed with your attorneys, but you have been discussing things with your attorneys for the last 10 or 15 minutes; is that correct?

A. That is correct, yes.

Q. And do you understand that you have the right under the Fifth Amendment ... to refuse to give testimony pertaining to any

subject that has the potential to incriminate you in any criminal activity? Do you understand that?

A. Yes, sir.

Q And do you understand that if questions are asked of you concerning things that were transmitted to a financial institution in order to obtain a loan, you would have the right to refuse to answer those questions on the ground that it might tend to incriminate you ...? Do you understand that? .... Do you understand what I am explaining?

A. Yes, sir. ....

Q. Dr. Jatoi, I'm not going to pass ... judgment on whether or not you submitted something that would subject you to a crime --

A. I see.

Q. --of criminal prosecution. All I am telling you, and asking you, is a better way to put it, do you understand --

A. Yes, sir.

Q. -- that if you give testimony that incriminates you in something illegal --

A. I see.

Q. -- that it could be used against you at a later date --

A. I see.

Q. -- if somebody were to prosecute you criminally?

A. Yes, sir.

Q. And you have the right now not to give that testimony, if you want to, by saying you refuse to answer the question on the grounds that it might incriminate you.

A. I will answer.

Q. Okay. Do you understand all of those things?

A. Yes, sir.

Jatoi argues that this exchange represented and "*in terrorem* threat of criminal prosecution" by the district court

against self-incrimination." *United States v. Colyer*, 571 F. 2d 941, 946 (5th Cir. 1978), *cert. denied*, 439 U. S. 933 (1978) (citing *United States v. Lacouture*, 495 F. 2d 1237, 1240 (5th Cir.), *cert. denied*, 419 U. S. 1053 (1974) This is because "the [district] judge is present as the embodiment of the Constitution, charged with the firm duty to see that the rights of all are upheld -- the defendants, the witnesses and the public. Whether and to whatever extent it may be the duty of the trial judge to caution a witness about his Fifth Amendment rights, a careful one never hesitates." *Colyer*, 571 F. 2d at 945 (quoting *United States v. Wilcox*, 450 F. 2d 1131, 1139 (5th Cir. 1971), *cert. denied*, 405 U. S. 917 (1972)). In this instance, the district court exhibited proper concern for the protection of Jatoi's Fifth Amendment rights, and Jatoi's understanding of them. Jatoi's attempts to portray this concern as intimidation

the district court's decision to deny Jatoi's motion for a new trial was not an abuse of its broad discretion.[4]

B.

Alternatively, Jatoi requests a stay of this appeal pending resolution of his Rule 60 (b) motion. Needless to say, "the pendency, or even the completion of an appeal" does not determine whether a Rule 60(b) motion can be considered by a district court. *Ingraham v. United States*, 808 F. 2d 1075, 1080-81 (5th Cir. 1987). "Because the 60 (b) motion may be separately considered pending appeal, a

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[4] Jatoi also contends that the district court exercised "pervasive control" over the trial proceedings in an effort to shorten the trial at his expense. Jatoi contends that the district court's conduct of the trial contributed to a coercive atmosphere which intimidated, and rendered ineffective, his trial counsel and, eventually, led to Jatoi's involuntary settlement. In his reply brief, Jatoi concedes that no objections were made at trial regarding alleged errors in the court's conduct of the proceedings; nor did Jatoi make this argument to the district court in his motion for a new trial. Because Jatoi did not properly raise this issue in the district court, we decline to consider it on appeal. *See Hudspeth v. United States*, 519 F. 2d 1055, 1056 n. 1 (5th Cir. 1975).

Jatoi's reply brief states that his 60 (b) motion "complains about Jatoi's counsel's actions as well as the actions of the [d]istrict [c]court" which contributed to his asserted involuntary settlement. Jatoi's grounds for 60 (b) relief, therefore, are apparently the same grounds presented by this appeal. As previously noted, Jatoi was not pressured into settlement by the district court and his contentions regarding his trial counsel were not properly presented for this appeal. Jatoi offers no new grounds in the Rule 60 (b) motion (e.g., mistake, newly discovered evidence, fraud, etc.) warranting a stay of this appeal pending a ruling on the motion by the district court.[5]

III.

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5 In its response brief, Amega contends that this appeal is frivolous and that it should be awarded attorney's fees as a sanction against Jatoi and his counsel. In his reply brief, Jatoi contends that Amega has intentionally misstated the record on appeal and, therefore, that Amega's response brief should be stricken and "appropriate sanctions" imposed. The parties respective requests are DENIED.

For the foregoing reasons, the district court judgment is AFFIRMED.

August 23, 1991.

APPENDIX B
IN THE UNITED STATES
COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 91-7003
Summary Calendar

IN THE MATTER OF: DR. ALIMADAD JATOI, ET, AL.,

Debtors.

AETNA INSURANCE COMPANY, ET AL.,

Appellees,

versus

DR. ALIMADAD JATOI,

Appellant.

Appeal from the United Stated
District Court For the Northern
District of Texas
CA-4-88-41-A

Before JONES, DUHE and WIENER, Circuit Judges.

PER CURIUM: *

We consider today Defendant-Appellant Alimadad Jatoi's second appeal in this case, this one being from the district court's denial of Jatoi's Rule 60 (b) motion. Plaintiff-Appellee Amega Construction, Inc. (Amega) and Third Party Defendant-Appellee Aetna Insurance Company (Aetna), in the brief to this court, recite the lengthy litany of ludicrous litigiousness on the part of Jatoi in support of their contentions that the instant appeal should be dismissed as frivolous, and in support of Amega's additional motion for sanctions under FRAP 38. Finding this second appeal to be wholly without merit, vexatious, dilatory and thus totally frivolous, we dismiss the appeal and sanction Jatoi and

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Michael R. Cooper, the latest attorney to represent Jatoi.

I.

Reiteration of the procedural history of this case would serve no useful purpose. It suffices that Jatoi's pettifoggery and abuse of the civil process is facially apparent, or at best thinly disguised, at every turn. We were reluctant to impose sanctions when his prior appeal of the same matter on essentially identical and equally baseless claims was dismissed as frivolous. We shall not, however, repeat our indulgence now. In the face of our dismissal of the first appeal as frivolous, Jatoi has nevertheless repeated the same meritless performance, but even more egregiously and at additional unwarranted cost of time, money and resources to the opposing parties and to the civil justice system as well.

Counsel Cooper attempts to justify his own sanctionable conduct on the basis of his belated entry into the case shortly before Jatoi's appellate brief was due, and on his purportedly limited opportunity to familiarize himself with Jatoi's case. But

that excuse rings hollow in view of the time that has elapsed since counsel spruced up Jatoi's pro se brief and filed it over his own signature. If instead of accepting Jatoi's version at face value without further investigation, counsel had but studied the briefs of opposing counsel and the record excerpts in this case -- an exercise that would not have taken more than a few hours at most -- he would or at least should have recognized the risk of sanction he took in signing and filing the brief for Jatoi in the first place. Moreover, if he had made such a cursory inquiry after filing that brief, he then could have and should have taken corrective action during the period of almost two months that has elapsed since his brief was filed with this court. He has done neither.

Not only do Jatoi's allegations as contained in Cooper's brief present no new authorities, advance no new bases for granting the relief sought, or present citations or arguments other than those meritless ones proposed in his first appeal. Now Jatoi makes unsupported, conclusory

accusations of misfeasance and malfeasance by other parties such as prior counsel and the district court. Such wasteful and abusive conduct, especially at this stage in these proceedings, will not be tolerated.

II.

For the reasons set forth above, the instant appeal is dismissed as frivolous and wholly without merit. For the filing of such a brief and the prosecuting of such an appeal under the instant circumstances, we reprimand Jatoi's current appellate counsel, Michael R. Cooper; and we impose monetary sanctions on Jatoi in the form of attorneys' fees payable to Plaintiff-Appellees Amega Construction, Inc. and Benedict Industries, Inc. We have reviewed the uncontradicted evidence of the services rendered, hourly rate, and explanation submitted by counsel for Amega and Benedict, and accept as reasonable for purposes of sanction the amount of $3,337.50 for participating in this second appeal and $837.50 for preparation of the motion and affidavit for sanctions. We further sanction Jatoi for attorneys' fees

payable to Aetna Insurance Company for this second appeal, in an amount to be determined upon receipt of proper substantiating documentation, if any, from counsel for Aetna, which documentation may be filed with this court at the election of those parties at any time up to fifteen (15) days following the date of this opinion.

Finally, we caution Jatoi that any further efforts to pursue or prolong this matter in this or any other federal forum within the jurisdiction of this court, including, without limitation, motions for panel rehearing and suggestions for rehearing en banc, will expose him and any participating counsel to the full panoply of sanctions available to this court, including but not limited to fines, detention, suspension and disbarment.

III.

This appeal is DISMISSED as frivolous, and Appellant and his counsel are SANCTIONED as set forth above.

June 30, 1992

APPENDIX C
IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 91-7003

IN THE MATTER OF: DR. ALIMADAD JATOI, ET AL.,

Debtors.

AETNA INSURANCE COMPANY, ET AL.,

Appellees,

versus

DR. ALIMADAD JATOI,

Appellant.

Appeal from the United States District Court For the Northern District of Texas

---

(CA-4-88-0041-A)

Before JONES, DUHE and WIENER, Circuit Judges.

PER CURIUM: *

In our June 30, 1992, unpublished per curium opinion for this case we found the acts of Defendant-Appellant Jatoi sanctionable and imposed a monetary sanction in the form of attorneys' fees and costs payable to Plaintiff-Appellees Amega Construction, Inc. and Benedict Industries, Inc., in specified amounts, and to Defendant-Appellee Aetna Insurance Company in an amount thereafter to be determined. Through an administrative oversight, this panel had failed to receive copies of Aetna's motion for sanctions and brief in support thereof, even though same had been filed with this court on April 15, 1992. The panel has now reviewed those filings and all exhibits in light of Jatoi's reply thereto filed April 28, 1992, and supplement our original opinion as set forth below.

After careful consideration of those data and review thereof in light of all applicable criteria for imposing sanctions and

determining the nature and quantum thereof, we are of the opinion that the appropriate amount payable to Aetna as sanctions for Jatoi's frivolous and vexatious appeal is $6,298.50. Jatoi is hereby ORDERED to remit that total sum to Aetna forthwith. All costs of this appeal, including costs associated with the seeking of sanctions against Jatoi by Plaintiffs-Appellees and Defendant-Appellee, are assessed to Jatoi.

July 21, 1992

APPENDIX D
IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 92-1057

IN THE MATTER OF : DR. ALIMADAD JATOI, ET AL.,

DEBTORS.

AMEGA CONSTRUCTION, INC., AETNA INSURANCE COMPANY, BENEDICT INDUSTRIES, INC., AND PIONEER CONCRETE OF TEXAS, INC.,

Appellees,

versus

DR. ALCINA F. JATOI,

Appellant.

Appealed from the United States District Court for the Northern District of Texas

---

Before JONES, DUHE, and WIENER, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellant's motion fo file brief out of time is denied.

IT IS FURTHER ORDERED that the motion of appellees, Amega Construction, Inc. and Benedict Industries, Inc., to dismiss the appeal is granted.

April 23, 1992

APPENDIX E
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CIVIL ACTION NO. CA-4-88-041-A

AMEGA CONSTRUCTION, INC.
VS.
DR. ALIMADAD JATOI, ET AL.

ORDER

The above-styled and numbered action came on to be tried on the merits before a jury on November 5, 1990. A jury was selected, opening statements were made and the parties offered evidence until the evening of November 7, 1990, at which time the parties announced to the Court that a settlement has been reached that disposes of all the claims and causes of action asserted by any party to this action against any other party to this action. The settlement agreement of the parties, as presented verbally to the Court,

contemplates that all claims and causes of action of any party to this action against any other party to this action are to be dismissed with prejudice to the refiling of same, that the respective parties are to bear their own court costs, and that the funds on deposit in the Registry of this Court in connection with this action are to be disbursed in an agreed upon manner, as set forth below.

The Court, therefore, ORDERS that, after the deduction by the Clerk of the fee authorized pursuant to 28 U. S. C. § 1914 (b), which is the sum of THIRTEEN THOUSAND EIGHT HUNDRED ONE AND 50/100 DOLLARS ($13, 801.50), all funds on deposit with the Clerk as a result of the amounts paid to the Clerk by Fort Worth Title Company (which payments are the subject matter of the Court's order in this action dated September 2, 1988), which funds include the principal amounts paid to the Clerk by Fort Worth Title Company and all interest earned thereon, are to be distributed by the Clerk as follows:

1. ONE HUNDRED THOUSAND DOLLARS ($100,000.00) of the total funds on deposit with the Clerk, as mentioned above, shall be paid by the Clerk to Aetna Insurance Company. The Clerk's disbursement payable to Aetna Insurance Company shall be mailed to Aetna Insurance Company in an envelope addressed as follows:

Aetna Insurance Company
c/o Mr. Michael L. Parham
Winstead Sechrest & Minick
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

2. ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000.00) Of the total amount on deposit with the Clerk, as mentioned above, shall be paid by the Clerk to Dr. Alimadad Jatoi. The clerk's disbursement payable to Dr. Alimadad Jatoi shall be mailed to Dr. Alimadad Jatoi in an envelope addressed as follows:

Dr. Alimadad Jatoi
c/o Mr. James T. Curtis

Decker, Jones, McMackin,
McClane, Hall & Bates
2400 City Center, Tower II
301 Commerce Street
Fort Worth, Texas 76102

3. SIXTEEN THOUSAND DOLLARS ($16,000.00) of the total amount on deposit with the Clerk, as mentioned above, shall be paid by the Clerk to Benedict Industries, Inc.. The clerk's disbursement payable to Benedict Industries, Inc., shall be mailed to Benedict Industries, Inc., in an envelope addressed as follows:

Benedict Industries, Inc.
c/o Mr. Marigny A. Lanier
Riddle & Brown
2100 Olympia & York Tower
1999 Bryan Street
Dallas, Texas 75201

4. FOUR THOUSAND DOLLARS ($4,000.00) of the total amount on deposit with the Clerk, as mentioned above, shall be paid by the Clerk to Pioneer Concrete of Texas, Inc. The Clerk's disbursement payable to Pioneer Concrete of Texas, Inc., shall be mailed to Pioneer Concrete of

Texas, Inc., in an envelope addressed as follows:

Pioneer Concrete of Texas, Inc.
c/o Mr. Mark Sax
Sax & Associates
2925 Briar Park, Suite 1150
Houston, Texas 77042

5. The entire balance remaining of the total funds on deposit with the Clerk, as mentioned above, after disbursement of the amounts mentioned in paragraphs 1, 2, 3 and 4 above, shall be paid by the Clerk to Amega Construction, Inc., shall be mailed to Amega Construction, Inc., in an envelope addressed as follows:

Amega Construction, Inc.
c/o Mr. Don A. Wetzel
Wetzel & Herron
2170 Buckthorne Place, Suite 300
The Woodlands, Texas 77380

Because the settlement reached by the parties renders moot and no longer appropriate rulings made in this action by the Court from the Bench the morning of

November 5, 1990, affecting Fort Worth Title Company and Pioneer Concrete of Texas, Inc., the Court sets aside all such rulings.

The Court further ORDERS that each and every claim and cause of action asserted in this action by any party to this action against any other party to this action should be and they are hereby dismissed with prejudice to the refiling of same. This dismissal includes, but is not limited to, all claims and causes of action asserted in this action (i) by Amega Construction, Inc., against Dr. Alimadad Jatoi, (ii) by Dr. Alimadad Jatoi against Amega Construction, Inc., Aetna Insurance Company or Fort Worth Title Company, (iii) by Aetna Insurance Company against Dr. Alimadad Jatoi, (iv) by Benedict Industries, Inc., against any other party to this action, (v) by Pioneer Concrete of Texas, Inc., against any other party to this action, and (vi) by Fort Worth Title Company against any other party to this action.

The Court further ORDERS that the respective parties to this action are to bear their own court costs.

Any relief sought by any party to this action that otherwise remains undisposed of is hereby denied so that this order shall constitute final and complete disposition of this action and all claims and causes of action asserted in it.

SIGNED this 8th day of November, 1990.

JOHN McBRYDE
United States District
Judge

APPENDIX F
IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

CIVIL ACTION NO. CA-4-88-041-A

AMEGA CONSTRUCTION, INC.
Plaintiff,

vs.

DR. ALIMADAD JATOI, et al.,
Defendant

ORDER

ON THIS DATE came on for consideration Plaintiff's Motion For Reconsideration of the Rule 60 (b) motion and it appearing that the Motion for reconsideration should be granted and that this Court should exercise its discretion to deny the 60 (b) motion. Accordingly, after reconsidering the 60 (b) motion, it is hereby

ORDERED that the Rule 60 (b) motion, is denied.

SIGNED this 8 day of August , 1991.

John McBryde
JUDGE PRESIDING

APPENDIX G
IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

CIVIL ACTION NO. 4-88-041-A

AMEGA CONSTRUCTION, INC.
Plaintiff,

vs.

DR. ALIMADAD JATOI, ET AL.,
Defendants.

ORDER

ON THIS DATE came on for consideration Alcina Jatoi's Motion for Relief from the Judgment or Order and it appearing that the Motion should be denied, it is hereby

ORDERED that Alcina Jatoi's Motion and Brief for Relief from the Judgment or Order be, and hereby, is denied.

SIGNED this 18 day of December 1991.

John McBryde
JUDGE PRESIDING

APPENDIX H
FINANCIAL SUMMARY
(BASED ON DRAW # 11)

A.

DRAW #11 OBTAINED FROM A.E.C.C. REPRESENTATIVE, ANDY BRUNDAGE ON DECEMBER 10, 1990

Payments Credited	$ 2,868,345.90
Contract Sum	3,209.000.00
Additional Change Orders	+ 251,655.90
Total Contract Price	$3,460,655.00
Payments to Amega through Change Order #11	$2,868,345.90
Payments Made by Peititioners on behalf of Amega for permit fees, inspections and to sub-contractors.	+ 321,909.26
Total Paid Amega	$3,190,255.16
Total Contract Price	$3,460,655.00
Amounts Paid by	

Petitioners	3,190,255.16
Net Due Amega on April 15, 1985	**$ 277,399.84**

B.

Registry of the Court Ledger

9-2-88	Received	$1,193,232.73
9-9-88	CD 358626	
ll-15-90	Bal. includ int.	$1,399,293.00

11-13-90	**Disbursements**	
	Forfeiture	7,809.21
	Registry fee	13,801.50
	Aetna	100,000.00
	Dr. A. Jatoi	150,000.00
	Benedict Ind.	16,000.00
	Pioneer Conc.	4,000.00
	Amega	1,110.545.66
Total		$ 1,399,293.00

APPENDIX I
AMEGA CONSTRUCTION

5400 L. B. J. Freeway, Suite 200
Dallas, Texas 75240 (214) 934-2992

April 13, 1984

Alimadad Jatoi, M.D.
800 North Industrial
Euless, Texas 76039

Dear Doctor Jatoi:

This letter will confirm our phone conversation of April 12, 1984. Regarding construction of your building by Amega Construction Company, the following five steps have taken place:

1. On March 12, 1984 - Dr. Alimadad Jatoi and Amega Construction, Inc. signed an Owner-Contractor Construction Contract.

* * * * *

5. Amega Construction, Inc. attorney has provided us with a Construction Bond in

the amount of $3.2 million to cover the contract amount. This has been forwarded to and will immediately be provided to Lender representative Andy Brundage of A.E.C.C.

We look forward to successful and early completion of this project.

Respectfully,

Drain Howard

cc: Guaranty Federal Savings & Loan

APPENDIX J

INSURANCE COMPANIES OF NORTH AMERICA, AETNA INSURANCE COMPANY, Companies of CIGNA
P. O. Box 720001
Atlanta, Georgia 30328
(404) 256-5510

December 31, 1985

Dr. Alimadad Jatoi
P. O. Box 627
Bedford, Texas 76021

Re: Obligee: Dr. Alimadad Jatoi
Principal: Amega Construction, Inc
Project: Jatoi Medical Center
Aetna Bond: XSH 70365
Aetna Claim: 040 B 465397-B

Dear Dr. Jatoi:

As you know, Aetna Insurance Company has retained the services of Carpenter, Carruth & Hover, Inc. to provide assistance with the necessary investigations

surrounding the Default/Termination action taken by you against Amega Construction, Inc. during construction of your new medical office facility located in Bedford, Texas.

As soon as Carpenter, Carruth & Hover is completed with their investigations, they will submit to Aetna a formal report of their findings. Shortly thereafter, we hope to be able to report to you definitively on those courses to be taken by Aetna for the future.

It is our understanding that contract balances, including retainage, are presently being withheld by you or your agent in trust. We therefore request that no future progress payments or retainage be released to Amega without our prior written approval. This request is made in part due to the number of Mechanic's Lien claims that have been filed, as well as our preliminary understanding that some contract work remains uncompleted.

Thank you very much for your consideration, and should you have any questions of Aetna while the investigative

work of Carpenter, Carruth & Hover is ongoing, please notify the writer.

Yours very truly,
John A Mooney
Bond Claims Manager, Dallas

cc: Mr. Richard Trickey
Carpenter, Carruth & Hover, Inc.
Mr. A. J. Campitelli - Aetna Home Ofc.

APPENDIX K

REMEDIAL WRITING MAY HAVE BEEN A BETTER CHOICE FOR THIS PROFESSION

By Christi Harlan
Staff Reporter of THE WALL STREET JOURNAL

FORT WORTH, Texas.--Dan Atkerson will spend part of his summer studying reading comprehension at Southern Methodist University in Dallas.

Mr. Atkerson, 32 years old, is no struggling college kid. He's a lawyer, and has been for eight years. But U. S. District Judge John McBryde of Fort Worth isn't convinced that Mr. Atkerson is catching on to some nuances of legal practice, such as following court orders.

Hence, Judge McBryde's decree last week: Mr. Atkerson must take courses in reading comprehension and legal ethics.

For all that, Mr. Atkerson, who declines to comment on the episode, is one lucky

lawyer. Judge McBryde, in his 20 months on the federal bench, has proved even tougher on some other lawyers.

Early last year, for example, the judge learned that sworn statements submitted in a labor dispute by American Airlines officials were signed not by the officials, but by their lawyers. The judge barred two lawyers for the AMR Corp. unit from appearing in any case in federal court in North Texas for six months and fined them $18,000.

So, Mr. Atkerson should have had fair warning when he appeared in Judge McBryde's court as local counsel for a unit of Merck & Co. in a case filed by a former employee of the big drug company. Judge McBryde directed that Mr. Atkerson and a Merck representative "with unlimited settlement authority" attend a conference aimed at settling the case.

But the in-house Merck lawyer who attended the conference didn't have any authority to offer money to the plaintiff, so Judge McBryde angrily ordered a second conference. Another in-house Merck

lawyer, associate general counsel Rosemary Orr, appeared. But she wasn't authorized to settle the case for more that $12,000.

Judge McBryde, now furious, ordered both Mr. Atkerson and Ms. Orr to study reading comprehension and legal ethics; when both asked him to reconsider, the fiat hit the fan. The judge said he would indeed reconsider - all of his options, including fines, disbarment from North Texas courts and criminal contempt of court charges.

At a hearing last week, lawyers for Ms. Orr and Mr. Atkerson withdrew their requests for the judge to reconsider his order. Judge McBryde let Merck and Ms. Orr off the hook, but directed Mr. Atkerson to summer school, as ordered. In writing, of course.

APPENDIX L

CHARLIE B. BROWN &
ASSOCIATES, LTD.
609 West Main Street
Carbondale, IL 62901
(618) 529-5005
FAX (618) 529-2249

Charlie B. Brown, MAI, SRPA
Trace B. Brown, CREA

December 28, 1990

Re. Rosemont Professional Building

Dr. Alimadad Jatoi
2520 Harwood, Suite 400
Bedford, Texas 76021

Dear Dr. Jatoi:

My records indicate I was employed to appraise the Rosemont Professional Building in the early part of 1985 for the purpose of valuing it for mortgage loan purposes as it was expected to be upon the

completion of the construction program described within the completed report. My employment was based on the acceptance of my qualifications by the Guaranty Federal Savings and Loan of Dallas, Texas with a copy of the report to be sent to them. This was done as evidenced by the submission letter to Ms. Kennis Ketchen, dated March 12, 1985, a copy of which is attached.

Very truly yours,
Charlie B. Brown K& Associate, Ltd.
by: Charlie B. Brown, MAI, SRPA

APPENDIX M

CHARLIE B. BROWN
609 West Main Street
Carbondale, IL 62901

Member:
American Institute of
Real Estate Appraisers

Phone
Area Code 618
549-6921

March 12, 1985

Ms. Kennis Ketchen
Guaranty Federal Savings & Loan
14180 Dallas Parkway, Suite 400
Dallas, Texas 75240

Dear Ms. Ketchen:

As requested, I have made an evaluation-analysis on the Rosemont Building and the Rosemont Clinic, currently under construction at the southwest corner of Brown Trail and Taylor Drive in Bedford, Texas for the purpose of estimating it's fair market value for mortgage loan purposes, as it expected to be upon completion of the construction program.

The accompanying report which has been completed in accordance to accepted appraisal standards and in accordance with F.H.L.B.B. Memorandum, R-41b describes the method of approach and contains data gathered in my investigation.

It is my opinion, that based upon said projection statements, the fair market value of the property, as it will be upon its completion, subject to the limiting conditions contained herein, is

ELEVEN MILLION NINE HUNDRED
TWENTY THOUSAND DOLLARS
($11, 920, 000)

Thank you for allowing me to be of service.

Respectfully submitted

Charlie B. Brown, MAI

APPENDIX N

Alimadad Jatoi, M.D., FRCS (ENG)
SURGEON
2520 Harwood, #400
Bedford, TX 76021
(817) 267-1361

November 9, 1990

Hand Delivered 11/9/90
Certified Letter #P 990 159 489
with Return Receipt Requested
same day delivery

The Honorable Judge McBryde
United States District Court
Northern Division of Texas
United States Court House, 4th Floor
819 Taylor Street (10th & Lamar)
Fort Worth, Texas 76102-6114

Re.: Amega Construction Company
vs.Alimadad Jatoi, M. D.
Case # CA-4-88-041-A
Counter Claimant: Alimadad Jatoi, M.D.

Dear Judge McBryde:

I wish to respectfully express my objection to the settlement, which was entered of record Wednesday, November 7, 1990. After you terrified me from the bench with threats of criminal prosecution and after my lawyers further terrified me with threats of criminal prosecution for alleged bank fraud, which I have not committed and of which I am totally innocent of, I was coerced under duress to say "yes" in open court with respect to this settlement.

I am now seeking new counsel, and as soon as a transcript can be secured (one has already been ordered I understand), I will file a motion to set aside or alter this judgment. Please consider this letter notice of my request to reject the settlement, and of my request for time to file a motion to set aside or the judgment. What went on in your court room with respect with me left me unable to exercise my own free will in agreeing to that settlement.

I would respectfully request that you not allow any disbursement of the funds in the

Registry of the Court until after we have secured a transcript, and I can make a motion to set aside the judgment, which I have never, of my own free will, agreed to.

Respectfully yours,

Alimadad Jatoi, M.D., F.R.C.S. (Eng.)

AFFIDAVIT OF PETITIONERS AS TO MAILING PETITION OF WRIT OF CERTIORARI

We, Alimadad Jatoi and Alcina F. Jatoi, Petitioners, swear that the foregoing Petition was deposited in the United States mail with the proper postage, prepaid, on November ___, 1992.

_____

Alimadad Jatoi

STATE OF TEXAS §
COUNTY OF DALLAS §

SWORN TO AND SUBSCRIBED before me, a notary public, by the said Alimadad Jatoi and Alcina F. Jatoi, on this the ___day of November 1992, to certify which witness my hand and seal.

_____

Notary Public in and for
The State of Texas

My Commission Expires:

_____

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of this Petition was mailed, postage prepaid, to Amega Construction, Inc., c/o Dan Vincinza, Esq., 2170 Buckthorne Place, The Woodlands, TX 77380; Aetna Insurance Company, c/o Pat Walinski, Esq.j, 5400 Renaissance Tower, 1201 Elm Street, Dallas, TX 75270; Benedict Industries, Inc., c/o Donna Benedict, 341 Bennett Lane, Lewisville, TX 75057; and

Pioneer Concrete of Texas, Inc., c/o Mark Sax, Esq., 2925 Briar Park, Suite 1150, Houston, TX 77042, attorneys for Respondents on this the ___day of November, 1992.

_____

Alimadad Jatoi